

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
O. O. C. J.**

SUMMARY SUIT NO.657 OF 2004

|                                                     |               |
|-----------------------------------------------------|---------------|
| Lila R. Parikh & Ors.                               | ...Plaintiffs |
| Versus                                              |               |
| Bharat Pranjivan Valia.                             | ...Defendant. |
| .....                                               |               |
| Ms.Kavita A.Shah i/b. A.G. Shah for the Plaintiffs. |               |
| None for the Defendant.                             |               |

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**CORAM : DR. D.Y. CHANDRACHUD, J.**

March 26, 2007.

**P.C.:**

The suit under Order 37 of the Code of Civil Procedure, 1908, has been instituted on a promissory note dated 5<sup>th</sup> September 1997 in the amount of Rs.1 lakh. On 9<sup>th</sup> January 2006, conditional leave to defend the suit was granted subject to the deposit of an amount of Rs. 1.40 lakhs within a period of four weeks. The order of the Learned Single Judge granting conditional leave to defend was carried in appeal. On 7<sup>th</sup> April 2006, the Division Bench dismissed the appeal, but granted an extension on the request of the Defendant to deposit the amount of Rs. 1.40 lakhs by a further period of six weeks. The Division Bench held that the Defendant has fairly accepted that the

cheques at Exh.A1 to the plaint have been duly issued by the Defendant. Hence, it is observed that the issue of limitation did not arise. The Division Bench also held that the transaction in question was an isolated transaction and did not amount to the business of money lending.

A certificate of non-deposit has been filed in these proceedings. The Defendant has not complied with the order subject to which conditional leave to defend was granted. The Plaintiffs have filed a compilation of the documents including the original of the promissory note executed on behalf of the Defendant. Since the Defendant has not complied with the condition subject to which leave to defend the suit was granted, the Plaintiffs are entitled to a decree in terms of the provision of Order 37 of the Code of Civil Procedure, 1908. The suit falls within the purview of Order 37 and the claim has been established.

In the circumstances, there shall be a decree in terms of prayer clause (a), subject to the modification that the Plaintiffs are entitled to interest at the rate of 9% per annum from the date of the suit until payment or realisation.

Refund of Court fee, if any, as per rules.

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